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ABSTRACT

This address to the Congress focuses on proposals by the President which he wished that Congress would enact, "two measures which would together shift the focus from more transportation to better education, and would curb busing while expanding educational opportunity." These are: (1) the Equal Educational Opportunities Act of 1972 and (2) the Student Transportation Moratorium Act of 1972. In his message, the President deals at length with "the fears and concerns" relating to the busing issue, and asserts that the objectives of the reforms he proposes are: "to give practical meaning to the concept of equal educational opportunity, to apply the experience gained in the process of desegregation, and also in efforts to give special help to the educationally disadvantaged, to ensure the continuing vitality of the principles laid down in Brown v. Board of Education, to downgrade busing as a tool for achieving equal educational opportunity, and to sustain the rights and responsibilities vested by the States in the local school boards." The President's message is followed by a full text of the two bills to be enacted. (Author/RJ)

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BUSING AND EQUALITY OF EDUCATIONAL OPPORTUNITY

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RELATIVE TO BUSING AND EQUALITY OF EDUCATIONAL OPPORTUNITY, AND TRANSMITTING A DRAFT OF PROPOSED LEGISLATION TO IMPOSE A MORATORIUM ON NEW AND ADDITIONAL STUDENT TRANSPORTATION

MARCH 20, 1972.—Message and accompanying papers referred to the Committee of the Whole House on the State of the Union and ordered to be printed

To the Congress of the United States:

In this message, I wish to discuss a question which divides many Americans. That is the question of busing.

I want to do so in a way that will enable us to focus our attention on a question which unites all Americans. That is the question of how to ensure a better education for all of our children.

In the furor over busing, it has become all too easy to forget what busing is supposed to be designed to achieve: equality of educational opportunity for all Americans.

Conscience and the Constitution both require that no child should be denied equal educational opportunity. That Constitutional mandate was laid down by the Supreme Court in *Brown* v. *Board of Education* in 1954. The years since have been ones of dismantling the old dual school system in those areas where it existed—a process that has now been substantially completed.

As we look to the future, it is clear that the efforts to provide equal educational opportunity must now focus much more specifically on education: on assuring that the opportunity is not only equal, but adequate, and that in those remaining cases in which desegregation has not yet been completed it be achieved with a greater sensitivity to educational needs.

Acting within the present framework of Constitutional and case law, the lower Federal courts have ordered a wide variety of remedies

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for the equal protection violations they have found. These remedies have included such plans as redrawing attendance zones, pairing, clustering and consolidation of school districts. Some of these plans have not required extensive additional transportation of pupils. But some have required that pupils be bused long distances, at great inconvenience. In some cases plans have required that children be bused away from their neighborhoods to schools that are inferior or even unsafe.

The maze of differing and sometimes inconsistent orders by the various lower courts has led to contradiction and uncertainty, and often to vastly unequal treatment among regions, States and local school districts. In the absence of statutory guidelines, many lower court decisions have gone far beyond what most people would consider reasonable, and beyond what the Supreme Court has said is necessary, in the requirements they have imposed for the reorganization of school districts and the transportation of school pupils.

All too often, the result has been a classic case of the remedy for one evil creating another evil. In this case, a remedy for the historic evil of racial discrimination has often created a new evil of disrupting communities and imposing hardship on children—both black and white—who are themselves wholly innocent of the wrongs that the plan seeks to set right.

The 14th Amendment to the Constitution—under which the school desegregation cases have arisen—provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Until now, enforcement has been left largely to the courts—which have operated within a limited range of available remedies, and in the limited context of case law rather than of statutory law. I propose that the Congress now accept the responsibility and use the authority given to it under the 14th Amendment to clear up the confusion which contradictory court orders have created, and to establish reasonable national standards.

The legislation I propose today would accomplish this.

It would put an immediate stop to further new busing orders by the Federal courts.

It would enlist the wisdom, the resources and the experience of the Congress in the solution of the vexing problems involved in fashioning school desegregation policies that are true to the Constitutional requirements and fair to the people and communities concerned.

It would establish uniform national criteria, to ensure that the Federal courts in all sections and all States would have a common set of standards to guide them.

These measures would protect the right of a community to maintain neighborhood schools—while also establishing a shared local and Federal responsibility to raise the level of education in the neediest neighborhoods, with special programs for those disadvantaged children who need special attention.

At the same time, these measures would not roll back the Constitution, or undo the great advances that have been made in ending school segregation, or undermine the continuing drive for equal rights.

Specifically, I propose that the Congress enact two measures which together would shift the focus from more transportation to better edu-

cation, and would curb busing while expanding educational opportunity. They are:

1. *The Equal Educational Opportunities Act of 1972.*

This would:

—Require that no State or locality could deny equal educational opportunity to any person on account of race, color or national origin.

—Establish criteria for determining what constitutes a denial of equal opportunity.

—Establish priorities of remedies for schools that are required to desegregate, with busing to be required only as a last resort, and then only under strict limitations.

—Provide for the concentration of Federal school-aid funds specifically on the areas of greatest educational need, in a way and in sufficient quantities so they can have a real and substantial impact in terms of improving the education of children from poor families.

2. *The Student Transportation Moratorium Act of 1972.*

—This would provide a period of time during which any future, new busing orders by the courts would not go into effect, while the Congress considered legislative approaches—such as the Equal Educational Opportunities Act—to the questions raised by school desegregation cases. This moratorium on new busing would be effective until July 1, 1973, or until the Congress passed the appropriate legislation, whichever was sooner. Its purpose would not be to contravene rights under the 14th Amendment, but simply to hold in abeyance further busing orders while the Congress investigated and considered alternative methods of securing those rights—methods that could establish a new and broader context in which the courts could decide desegregation cases, and that could render busing orders unnecessary.

Together, these two measures would provide an immediate stop to new busing in the short run, and constructive alternatives to busing in the long run—and they would give the Congress the time it needs to consider fully and fairly one of the most complex and difficult issues to confront the Nation in modern times.

Busing: The Fears and Concerns

Before discussing the specifics of these proposals, let me deal candidly with the controversy surrounding busing itself.

There are some people who fear any curbs on busing because they fear that it would break the momentum of the drive for equal rights for blacks and other minorities. Some fear it would go further, and that it would set in motion a chain of reversals that would undo all the advances so painfully achieved in the past generation.

It is essential that whatever we do to curb busing be done in a way that plainly will not have these other consequences. It is vitally important that the Nation's continued commitment to equal rights and equal opportunities be clear and concrete.

On the other hand, it is equally important that we not allow emotionalism to crowd out reason, or get so lost in symbols that words lose their meaning.

One emotional undercurrent that has done much to make this so difficult an issue is the feeling some people have that to oppose busing

is to be anti-black. This is closely related to the arguments often put forward that resistance to any move, no matter what, that may be advanced in the name of desegregation is "racist." This is dangerous nonsense.

There is no escaping the fact that some people oppose busing because of racial prejudice. But to go on from this to conclude that "anti-busing" is simply a code word for prejudice is an exercise in arrant unreason. There are right reasons for opposing busing, and there are wrong reasons—and most people, including large and increasing numbers of blacks and other minorities, oppose it for reasons that have little or nothing to do with race. It would compound an injustice to persist in massive busing simply because some people oppose it for the wrong reasons.

For most Americans, the school bus used to be a symbol of hope—or better education. In too many communities today, it has become a symbol of helplessness, frustration and outrage—of a wrenching of children away from their families, and from the schools their families may have moved to be near, and sending them arbitrarily to others far distant.

It has become a symbol of social engineering on the basis of abstractions, with too little regard for the desires and the feelings of those most directly concerned: the children, and their families.

Schools exist to serve the children, not to bear the burden of social change. As I put it in my policy statement on school desegregation 2 years ago (on March 24, 1970):

> One of the mistakes of past policy has been to demand too much of our schools: They have been expected not only to educate, but also to accomplish a social transformation. Children in many instances have not been served, but used—in what all too often has proved a tragically futile effort to achieve in the schools the kind of multiracial society which the adult community has failed to achieve for itself.
>
> If we are to be realists, we must recognize that in a free society there are limits to the amount of Government coercion that can reasonably be used; that in achieving desegregation we must proceed with the least possible disruption of the education of the Nation's children; and that our children are highly sensitive to conflict, and highly vulnerable to lasting psychic injury.
>
> Failing to recognize these factors, past policies have placed on the schools and the children too great a share of the burden of eliminating racial disparities throughout our society. A major part of this task falls to the schools. But they cannot do it all or even most of it by themselves. Other institutions can share the burden of breaking down racial barriers, but only the schools can perform the task of education itself. If our schools fail to educate, then whatever they may achieve in integrating the races will turn out to be only a Pyrrhic victory.

The Supreme Court has also recognized this problem. Writing for a unanimous Court in the *Swann* case last April, Chief Justice Burger said:

> The constant theme and thrust of every holding from *Brown I* to date is that State-enforced separation of races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.
>
> We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from *Brown I* to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. . . .
>
> Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

In addressing the busing question, it is important that we do so in historical perspective.

Busing for the purpose of desegregation was begun– mostly on a modest scale—as one of a mix of remedies to meet the requirements laid down by various lower Federal courts for achieving the difficult transition from the old dual school system to a new, unitary system.

At the time, the problems of transition that loomed ahead were massive, the old habits deeply entrenched, community resistance often extremely strong. As the years wore on, the courts grew increasingly impatient with what they sometimes saw as delay or evasion, and increasingly insistent that, as the Supreme Court put it in the *Green* decision in 1968, desegregation plans must promise "realistically to work, and . . . to work *now*."

But in the past 3 years, progress toward eliminating the vestiges of the dual system has been phenomenal—and so too has been the shift in public attitudes in those areas where dual systems were formerly operated. In State after State and community after community, local civic, business and educational leaders of all races have come forward to help make the transition peacefully and successfully. Few voices are now raised urging a return to the old patterns of enforced segregation.

This new climate of acceptance of the basic Constitutional doctrine is a new element of great importance: for the greater the elements of basic good faith, of desire to make the system work, the less need or justification there is for extreme remedies rooted in coercion.

At the same time, there has been a marked shift in the focus of concerns by blacks and members of other minorities. Minority parents have long had a deep and special concern with improving the quality of their children's education. For a number of years, the principal

emphasis of this concern—and of the Nation's attention—was on desegregating the schools. Now that the dismantling of the old dual system has been substantially completed there is once again a far greater balance of emphasis on improving schools, on convenience, on the chance for parental involvement—in short, on the same concerns that motivate white parents—and, in many communities, on securing a greater measure of control over schools that serve primarily minority-group communities. Moving forward on desegregation is still important—but the principal concern is with preserving the principle, and with ensuring that the great gains made since *Brown*, and particularly in recent years, are not rolled back in a reaction against excessive busing. Many black leaders now express private concern, moreover, that a reckless extension of busing requirements could bring about precisely the results they fear most: a reaction that would undo those gains, and that would begin the unraveling of advances in other areas that also are based on newly expanded interpretations of basic Constitutional rights.

Also, it has not escaped their notice that those who insist on system-wide racial balance insist on a condition in which, in most communities, every school would be run by whites and dominated by whites, with blacks in a permanent minority—and without escape from that minority status. The result would be to deny blacks the right to have schools in which they are the majority.

In short, this is not the simple black-white issue that some simplistically present it as being. There are deep divisions of opinion among people of all races—with recent surveys showing strong opposition to busing among black parents as well as among white parents—not because they are against desegregation but because they are for better education.

In the process of school desegregation, we all have been learning; perceptions have been changing. Those who once said "no" to racial integration have accepted the concept, and believe in equality before the law. Those who once thought massive busing was the answer have also been changing their minds in the light of experience.

As we cut through the clouds of emotionalism that surround the busing question, we can begin to identify the legitimate issues.

Concern for the quality of education a child gets is legitimate.

Concern that there be no retreat from the principle of ending racial discrimination is legitimate.

Concern for the distance a child has to travel to get to school is legitimate.

Concern over requiring that a child attend a more distant school when one is available near his home is legitimate.

Concern for the obligation of government to assure, as nearly as possible, that all the children of a given district have equal educational opportunity is legitimate.

Concern for the way educational resources are allocated among the schools of a district is legitimate.

Concern for the degree of control parents and local school boards should have over their schools is legitimate.

In the long, difficult effort to give life to what is in the law, to desegregate the Nation's schools and enforce the principle of equal

opportunity, many experiments have been tried. Some have worked, and some have not. We now have the benefit of a fuller fund of experience than we had 18 years ago, or even 2 years ago. It has also become apparent that community resistance—black as well as white—to plans that massively disrupt education and separate parents from their children's schools, makes those plans unacceptable to communities on which they are imposed.

Against this background, the objectives of the reforms I propose are:

—To give practical meaning to the concept of equal educational opportunity.

—To apply the experience gained in the process of desegregation, and also in efforts to give special help to the educationally disadvantaged.

—To ensure the continuing vitality of the principles laid down in *Brown* v. *Board of Education*.

—To downgrade busing as a tool for achieving equal educational opportunity.

—To sustain the rights and responsibilities vested by the States in local school boards.

THE EQUAL EDUCATIONAL OPPORTUNITIES ACT

In the historic effort since 1954 to end the system of State-enforced segregation in the public schools, all three branches of Government have had important functions and responsibilities. Their roles, however, have been unequal.

If some of the Federal courts have lately tended toward extreme remedies in school desegregation cases—and some have—this has been in considerable part because the work has largely gone forward in the courts, case-by-case, and because the courts have carried a heavy share of the burden while having to operate within a limited framework of reference and remedies. The efforts have therefore frequently been disconnected, and the result has been not only great progress but also the creation of problems severe enough to threaten the immense achievement of these 18 difficult years.

If we are to consolidate our gains and move ahead on our problems—both the old and the new—we must undertake now to bring the leaven of experience to the logic of the law.

Drawing on the lessons of experience, we must provide the courts with a new framework of reference and remedies.

The angry debate over busing has at one and the same time both illuminated and obscured a number of broad areas in which realism and shared concern in fact unite most American parents, whatever their race. Knowledge of such shared concerns is the most precious product of experience; it also is the soundest foundation of law. The time is at hand for the legislative, executive and judicial branches of Government to act on this knowledge, and by so doing to lift the sense of crisis that threatens the education of our children and the peace of our people.

The Equal Educational Opportunities Act that I propose today draws on that experience, and is designed to give the courts a new

and broader base on which to decide future cases, and to place the emphasis where it belongs: on better education for all of our children.

Equal Opportunity: The Criteria

The act I propose undertakes, in the light of experience, both to prohibit and to define the denial of equal educational opportunity. In essence, it provides that:

—No State shall deny equal educational opportunity to any person on account of race, color or national origin.

—Students shall not be deliberately segregated either among or within the public schools.

—Where deliberate segregation was formerly practiced, educational agencies have an affirmative duty to remove the vestiges of the dual system.

—A student may not be assigned to a school other than the one nearest his home, if doing so would result in a greater degree of racial segregation.

—Subject to the other provisions of the act, the assignment of students to their neighborhood schools would not be considered a denial of equal educational opportunity unless the schools were located or the assignment made for the purpose of racial segregation.

—Racial balance is not required.

—There can be no discrimination in the employment and assignment of faculty and staff.

—School authorities may not authorize student transfers that would have the effect of increasing segregation.

—School authorities must take appropriate action to overcome whatever language barriers might exist, in order to enable all students to participate equally in educational programs. This would establish, in effect, an educational bill of rights for Mexican-Americans, Puerto Ricans, Indians and others who start under language handicaps, and ensure at last that they too would have equal opportunity.

—Through Federal financial assistance and incentives, school districts would be strongly encouraged not only to avoid shortchanging the schools that serve their neediest children, but beyond this to establish and maintain special learning programs in those schools that would help children who were behind to catch up. These incentives would also encourage school authorities to provide for voluntary transfers of students that would reduce racial concentrations.

Thus, the act would set standards for all school districts throughout the Nation, as the basic requirements for carrying out, in the field of public education, the Constitutional guarantee that each person shall have equal protection of the laws. It would establish broad-based and specific criteria to ensure against racial discrimination in school assignments, to establish the equal educational rights of Mexican-Americans, Puerto Ricans and others starting with language handicaps, to protect the principle of the neighborhood school. It would also provide money and incentives to help ensure for schools in poor neighborhoods the fair treatment they have too often been denied in the past, and to provide the special learning and extra attention that children in those neighborhoods so often need.

Denial of Equal Opportunity: The Remedies

In the past, the courts have largely been left to their own devices in determining appropriate remedies in school desegregation cases. The results have been sometimes sound, sometimes bizarre—but certainly uneven. The time has come for the Congress, on the basis of experience, to provide guidance. Where a violation exists, the act I propose would provide that:

—The remedies imposed must be limited to those needed to correct the particular violations that have been found.

—School district lines must not be ignored or altered unless they are clearly shown to have been drawn for purposes of segregation.

—Additional busing must not be required unless no other remedy can be found to correct the particular violation that exists.

—A priority of remedies would be established, with the court required to use the first remedy on the list, or the first combination of remedies, that would correct the unlawful condition. The list of authorized remedies—in order—is:

(1) Assigning students to the schools closest to their homes that provide the appropriate level and type of education, taking into account school capacities and natural physical barriers;

(2) Assigning students to the schools closest to their homes that provide the appropriate level and type of education, considering only school capacities;

(3) Permitting students to transfer from a school in which their race is a majority to one in which it is a minority;

(4) Creation or revision of attendance zones or grade structures without necessitating increased student transportation;

(5) Construction of new schools or the closing of inferior schools;

(6) The use of magnet schools or educational parks to promote integration;

(7) Any other plan is educationally sound and administratively feasible. However, such a plan could not require increased busing of students in the sixth grade or below. If a plan involved additional busing of older children, then: (a) It could not be ordered unless there was clear and convincing evidence that no other method would work; (b) in no case could it be ordered on other than a temporary basis; (c) it could not pose a risk to health, or significantly impinge on the educational process; (d) the school district could be granted a stay until the order had been passed on by the court of appeals.

—Beginning with the effective date of the act, time limits would be placed on desegregation orders. They would be limited to 10 years' duration—or 5 years if they called for student transportation—provided that during that period the school authorities had been in good-faith compliance. New orders could then be entered only if there had been new violations.

These rules would thus clearly define what the Federal courts could and could not require; however, the States and localities would remain free to carry out voluntary school integration plans that might go substantially beyond the Federal requirements.

This is an important distinction. Where busing would provide educational advantages for the community's children and where the community wants to undertake it, the community should—and will—have that choice. What is objectionable is an arbitrary Federal requirement—whether administrative or judicial—that the community must undertake massive additional busing as a matter of Federal law. The essence of a free society is to restrict the range of what must be done, and broaden the range of what may be done.

Equal Opportunity: Broadening the Scope

If we were simply to place curbs on busing and do nothing more, then we would not have kept faith with the hopes, the needs—or the rights—of the neediest of our children.

Even adding the many protections built into the rights and remedies sections of the Equal Educational Opportunities Act, we would not by this alone provide what their special needs require.

Busing helps some poor children; it poses a hardship for others, but there are many more, and in many areas the great majority—in the heart of New York, and in South Chicago, for example—whom it could never reach.

If we were to treat busing as some sort of magic panacea, and to concentrate our efforts and resources on that as the principal means of achieving quality education for blacks and other minorities, then in these areas of dense minority concentration a whole generation could be lost.

If we hold massive busing to be, in any event, an unacceptable remedy for the inequalities of educational opportunity that exist, then we must do more to improve the schools where poor families live.

Rather than require the spending of scarce resources on ever-longer bus rides for those who happen to live where busing is possible, we should encourage the putting of those resources directly into education—serving all the disadvantaged children, not merely those on the bus routes.

In order to reach the great majority of the children who most need extra help, I propose a new approach to financing the extra efforts required: one that puts the money where the needs are, drawing on the funds I have requested for this and the next fiscal year under Title I of the Elementary and Secondary Education Act of 1965 and under the Emergency School Aid Act now pending before the Congress.

As part of the Equal Education Opportunities Act, I propose to broaden the uses of the funds under the Emergency School Aid Act, and to provide the Secretary of Health, Education, and Welfare with additional authority to encourage effective special learning programs in those schools where the needs are greatest.

Detailed program criteria would be spelled out in administrative guidelines—but the intent of this program is to use a major portion of the $1.5 billion Emergency School Aid money as, in effect, incentive grants to encourage eligible districts to design educational programs that would do three things:

—Assure (as a condition of getting the grant) that the district's expenditures on its poorest schools were at least comparable to those on its other schools.

—Provide, above this, a compensatory education grant of approximately $300 per low-income pupil for schools in which substantial

numbers of the students are from poor families, if the concentration of poor students exceeds specified limits.

—Require that this compensatory grant be spent entirely on basic instructional programs for language skills and mathematics, and on basic supportive services such as health and nutrition.

—Provide a "bonus" to the receiving school for each pupil transferring from a poor school to a non-poor school where his race is in the minority, without reducing the grant to the transferring school.

Priority would be given to those districts that are desegregating either voluntarily or under court order, and to those that are addressing problems of both racial and economic impaction.

Under this plan, the remaining portion of the $1.5 billion available under the Emergency School Aid Act for this and the next fiscal year would go toward the other kinds of aid originally envisaged under it.

This partial shift of funds is now possible for two reasons: First, in the nearly 2 years since I first proposed the Emergency School Aid Act, much of what it was designed to help with has already been done. Second, to the extent that the standards set forth in the Equal Educational Opportunities Act would relieve desegregating districts of some of the more expensive requirements that might otherwise be laid upon them, a part of the money originally intended to help meet those expenses can logically be diverted to these other, closely related needs. I would stress once again, in this connection, the importance I attach to final passage of the Emergency School Aid Act: those districts that are now desegregating still need its help, and the funds to be made available for these new purposes are an essential element of a balanced equal opportunity package.

I also propose that instead of being terminated at the end of fiscal 1973, as presently scheduled, the Emergency School Aid Act continue to be authorized at a $1 billion annual level—of which I would expect the greatest part to be used for the purposes I have outlined here. At the current level of funding of Title I of the Elementary and Secondary Education Act of 1965, this would provide a total approaching $2.5 billion annually for compensatory education purposes.

For some years now, there has been a running debate about the effectiveness of added spending for programs of compensatory or remedial education. Some have maintained there is virtually no correlation between dollar input and learning output; others have maintained there is a direct correlation; experience has been mixed.

What does now seem clear is that while many Title I experiments have failed, many others have succeeded substantially and even dramatically; and what also is clear is that without the extra efforts such extra funding would make possible, there is little chance of breaking the cycle of deprivation.

A case can be made that Title I has fallen short of expectations, and that in some respects it has failed. In many cases, pupils in the programs funded by it have shown no improvement whatever, and funds have frequently been misused or squandered foolishly. Federal audits of State Title I efforts have found instances where naivete, inexperience, confusion, despair, and even clear violations of the law have thwarted the act's effectiveness. In some instances, Title I funds have been illegally spent on unauthorized materials and facilities, or used

to fund local services other than those intended by the act, such as paying salaries not directly related to the act's purposes.

The most prevalent failing has been the spending of Title I funds as general revenue. Out of 40 States audited between 1966 and 1970, 14 were found to have spent Title I funds as general revenue.

Too often, one result has been that instead of actually being concentrated in the areas of critical need, Title I moneys have been diffused throughout the system; and they have not reached the targeted schools—and targeted children—in sufficient amounts to have a real impact.

On the positive side, Title I has effected some important changes of benefit to disadvantaged children.

First, Title I has encouraged some States to expand considerably the contributions from State and local funds for compensatory education. In the 1965–66 school year, the States spent only $2.7 million of their own revenues, but by the 1968–69 school year—largely due to major efforts by California and New York—they were contributing $198 million.

Second, Title I has better focused attention on pupils who previously were too often ignored. About 8 million children are in schools receiving some compensatory funds. In 46 States programs have been established to aid almost a quarter of a million children of migratory workers. As an added dividend, many States have begun to focus educational attention on the early childhood years which are so important to the learning process.

Finally, local schools have been encouraged by Title I to experiment and innovate. Given our highly decentralized national educational system and the relatively minor role one Federal program usually plays, there have been encouraging examples of programs fostered by Title I which have worked.

In designing compensatory programs, it is difficult to know exactly what will work. The circumstances of one locality may differ dramatically from those of other localities. What helps one group of children may not be of particular benefit to others. In these experimental years, local educational agencies and the schools have had to start from scratch, and to learn for themselves how to educate those who in the past had too often simply been left to fall further behind.

In the process, some schools did well and others did not. Some districts benefited by active leadership and community involvement, while others were slow to innovate and to break new ground.

While there is a great deal yet to be learned about the design of successful compensatory programs, the experience so far does point in one crucial direction: to the importance of providing sufficiently concentrated funding to establish the educational equivalent of a "critical mass," or threshold level. Where funds have been spread too thinly, they have been wasted or dissipated with little to show for their expenditure. Where they have been concentrated, the results have been frequently encouraging and sometimes dramatic.

In a sample of some 10,000 disadvantaged pupils in California, 82 percent of those in projects spending less than $150 extra per pupil showed little or no achievement gain. Of those students in projects spending over $250 extra per pupil, 94 percent gained more than one

year per year of exposure; 58 percent gained between 1.4 and 1.9 years per year of exposure. Throughout the country States as widely separated as Connecticut and Florida have recognized a correlation between a "critical mass" expenditure and marked effectiveness.

Of late, several important studies have supported the idea of a "critical mass" compensatory expenditure to afford disadvantaged pupils equal educational opportunity. The New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education, the National Educational Finance Project, and the President's Commission on School Finance have all cited the importance of such a substantial additional per pupil expenditure for disadvantaged pupils.

The program which I propose aims to assure schools with substantial concentrations of poor children of receiving an average $300 compensatory education grant for each child.

In order to encourage voluntary transfers, under circumstances where they would reduce both racial isolation and low-income concentration, any school accepting such transfers would receive the extra $300 allotted for the transferring student plus a bonus payment depending on the proportion of poor children in that school.

One key to the success of this new approach would be the "critical mass" achieved by both increasing and concentrating the funds made available; another would be vigorous administrative follow-through to ensure that the funds are used in the intended schools and for the intended purposes.

THE STUDENT TRANSPORTATION MORATORIUM ACT

In times of rapid and even headlong change, there occasionally is an urgent need for reflection and reassessment. This is especially true when powerful, historic forces are moving the Nation toward a conflict of fundamental principles—a conflict that can be avoided if each of us does his share, and if all branches of Government will join in helping to redefine the questions before us.

Like any comprehensive legislative recommendation, the Equal Educational Opportunities Act that I have proposed today is offered as a framework for Congressional debate and action.

The Congress has both the Constitutional authority and a special capability to debate and define new methods for implementing Constitutional principles. And the educational, financial and social complexities of this issue are not, and are not properly, susceptible of solution by individual courts alone or even by the Supreme Court alone.

This is a moment of considerable conflict and uncertainty; but it is also a moment of great opportunity.

This is not a time for the courts to plunge ahead at full speed.

If we are to set a course that enables us to act together, and not simply to do more but to do better, then we must do all in our power to create an atmosphere that permits a calm and thoughtful assessment of the issues, choices and consequences.

I propose, therefore, that the Congress act to impose a temporary freeze on new busing orders by the Federal courts—to establish a waiting period while the Congress considers alternative means of enforc-

ing 14th Amendment rights. I propose that this freeze be effective immediately on enactment, and that it remain in effect until July 1, 1973, or until passage of the appropriate legislation, whichever is sooner.

This freeze would not put a stop to desegregation cases; it would only bar new orders during its effective period, to the extent that they ordered new busing.

This, I recognize, is an unusual procedure. But I am persuaded that the Congress has the Constitutional power to enact such a stay, and I believe the unusual nature of the conflicts and pressures that confront both the courts and the country at this particular time requires it.

It has become abundantly clear, from the debates in the Congress and from the upwelling of sentiment throughout the country, that some action will be taken to limit the scope of busing orders. It is in the interest of everyone—black and white, children and parents, school administrators and local officials, the courts, the Congress and the executive branch, and not least in the interest of consistency in Federal policy, that while this matter is being considered by the Congress we not speed further along a course that is likely to be changed.

The legislation I have proposed would provide the courts with a new set of standards and criteria that would enable them to enforce the basic Constitutional guarantees in different ways.

A stay would relieve the pressure on the Congress to act on the long-range legislation without full and adequate consideration. By providing immediate relief from a course that increasing millions of Americans are finding intolerable, it would allow the debate on permanent solutions to proceed with less emotion and more reason.

For these reasons—and also for the sake of the additional children faced with busing now—I urge that the Congress quickly give its approval to the Student Transportation Moratorium Act.

No message to the Congress on school desegregation would be complete unless it addressed the question of a Constitutional amendment.

There are now a number of proposals before the Congress, with strong support, to amend the Constitution in ways designed to abolish busing or to bar the courts from ordering it.

These proposals should continue to receive the particularly thoughtful and careful consideration by the Congress that any proposal to amend the Constitution merits.

It is important to recognize, however, that a Constitutional amendment—even if it could secure the necessary two-thirds support in both Houses of the Congress—has a serious flaw: it would have no impact this year; it would not come into effect until after the long process of ratification by three-fourths of the State legislatures. What is needed is action now; a Constitutional amendment fails to meet this immediate need.

Legislation meets the problem now. Therefore, I recommend that as its first priority the Congress go forward immediately on the legislative route. Legislation can also treat the question with far greater precision and detail than could the necessarily generalized language of a Constitutional amendment, while making possible a balanced, comprehensive approach to equal educational opportunity.

CONCLUSION

These measures I have proposed would place firm and effective curbs on busing—and they would do so in a Constitutional way, aiding rather than challenging the courts, respecting the mandate of the 14th Amendment, and exercising the responsibility of the Congress to enforce that Amendment.

Beyond making these proposals, I am directing the Executive departments to follow policies consistent with the principles on which they are based—which will include intervention by the Justice Department in selected cases before the courts, both to implement the stay and to resolve some of those questions on which the lower courts have gone beyond the Supreme Court.

The Equal Educational Opportunities Act I have proposed reflects a serious and wide-ranging process of consultation—drawing upon the knowledge and experience of legislators, Constitutional scholars, educators and government administrators, and of men and women from all races and regions of the country who shared with us the views and feelings of their communities.

Its design is in large measure the product of that collaboration. When enacted it would, for the first time, furnish a framework for collaborative action by the various branches of Federal and local government, enabling courts and communities to shape effective educational solutions which are responsive not only to Constitutional standards but also to the physical and human reality of diverse educational situations.

It will create more local choice and more options to choose from; and it will marshal and target Federal resources more effectively in support of each particular community's effort.

Most importantly, however, these proposals undertake to address the problem that really lies at the heart of the issue at this time: the inherent inability of the courts, acting alone, to deal effectively and acceptably with the new magnitude of educational and social problems generated by the desegregation process.

If these proposals are adopted, those few who want an arbitrary racial balance to be imposed on the schools by Federal fiat will not get their way.

Those few who want a return to segregated schools will not get their way.

Those few who want a rollingback of the basic protections black and other minority Americans have won in recent years will not get their way.

This Administration means what it says about dismantling racial barriers, about opening up jobs and housing and schools and opportunity to all Americans.

It is not merely rhetoric, but our record, that demonstrates our determination.

We have achieved more school desegregation in the last 3 years than was achieved in the previous 15.

We have taken the lead in opening up high-paying jobs to minority workers.

We have taken unprecedented measures to spur business ownership by members of minorities.

We have brought more members of minorities into the middle and upper levels of the Federal service than ever before.

We have provided more support to black colleges than ever before.

We have put more money and muscle into enforcement of the equal opportunity laws than ever before.

These efforts will all go forward—with vigor and with conviction. Making up for the years of past discrimination is not simply something that white Americans owe to black Americans—it is somewhat the entire Nation owes to itself.

I submit these proposals to the Congress mindful of the profound importance and special complexity of the issues they address. It is in that spirit that I have undertaken to weigh and respect the conflicting interests; to strike a balance which is thoughtful and just; and to search for answers that will best serve all of the Nation's children. I urge the Congress to consider them in the same spirit.

The great majority of Americans, of all races, want their Government—the Congress, the Judiciary and the Executive—to follow the course of deliberation, not confrontation. To do this we must act calmly and creatively, and we must act together.

The great majority of Americans, of all races, want schools that educate and rules that are fair. That is what these proposals attempt to provide.

RICHARD NIXON.

THE WHITE HOUSE, *March 17, 1972.*

A BILL To impose a moratorium on new and additional student transportation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Student Transportation Moratorium Act of 1972."

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that:

(1) For the purpose of desegregation, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students.

(2) In many cases these reorganizations, with attendant increases in student transportation, have caused substantial hardship to the children thereby affected, have impinged on the educational process in which they are involved, and have required increases in student transportation often in excess of that necessary to accomplish desegregation.

(3) There is a need to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the Fourteenth Amendment to the United States Constitution to desegregate its schools.

(4) The Congress is presently considering legislation to establish such a standard and define that obligation.

(5) There is a substantial likelihood that, pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than required by the Fourteenth Amendment and permitted by such pending legislation and that these plans will require modification in light of the legislation's requirements.

(6) Implementation of desegregation plans will in many cases require local educational agencies to expend large amounts of funds for transportation equipment, which may be utilized only temporarily, and for its operation, thus diverting those funds from improvements in educational facilities and instruction which otherwise would be provided.

(7) The modification of school schedules and student assignments resulting from implementation of desegregation plans and any subsequent modification in light of the legislation's requirements would place substantial unnecessary administrative burdens on local educational agencies and unduly disrupt the educational process.

(b) It is, therefore, the purpose of this Act to impose a moratorium on the implementation of Federal court orders that require local educational agencies to transport students and on the implementation of certain desegregation plans under Title VI of the Civil Rights Act of 1964, in order to provide Congress time to fashion such a standard, and to define such an obligation.

MORATORIUM ON ORDERS AND PLANS

SEC. 3. (a) During the period beginning with the day after the date of enactment of this Act and ending with July 1, 1973, or the date of enactment of legislation which the Congress declares to be that contemplated by Sec. 2(a)(4), whichever is earlier, the implementation of any order of a court of the United States entered during such period shall be stayed to the extent it requires, directly or indirectly, a local educational agency—

(1) to transport a student who was not being transported by such local educational agency immediately prior to the entry of such order; or

(2) to transport a student to or from a school to which or from which such student was not being transported by such local educational agency immediately prior to the entry of such order.

(b) During the period described in subsection (a) of this section, a local educational agency shall not be required to implement a desegregation plan submitted to a department or agency of the United States during such period pursuant to Title VI of the Civil Rights Act of 1964 to the extent that such plan provides for such local educational agency to carry out any action described in clause (1) or (2) of subsection (a) of this section.

(c) Nothing in this Act shall prohibit an educational agency from proposing, adopting, requiring, or implementing any desegregation plan, otherwise lawful, that exceeds the limitations specified in subsection (a) of this section, nor shall any court of the United States or department or agency of the Federal Government be prohibited from

approving implementation of a plan that exceeds the limitations specified in subsection (a) of this section if the plan is voluntarily proposed by the appropriate educational agency.

SEC. 4. For purposes of this Act—

(a) The term "desegregation" means desegregation as defined by Section 401 (b) of the Civil Rights Act of 1964.

(b) The term "local educational agency" means a local educational agency as defined by Section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) A local educational agency shall be deemed to transport a student if it pays any part of the cost of such student's transportation, or otherwise provides such transportation.

A BILL To further the achievement of equal educational opportunities

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Educational Opportunities Act of 1972."

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin; and

(2) the neighborhood is an appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this Act to provide Federal financial assistance for educationally deprived students and to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

FINDINGS

SEC. 3. (a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, or national origin denies to those students the equal protection of the laws guaranteed by the Fourteenth Amendment;

(2) the abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems;

(3) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(4) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the

maintenance or improvement of the quality of educational facilities and instruction provided;

(5) excessive transportation of students creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity;

(6) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(7) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have failed to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

DECLARATION

SEC. 4. The Congress declares that this Act is the legislation contemplated by section 2(a)(4) of the "Student Transportation Moratorium Act of 1972."

TITLE I—ASSISTANCE

CONCENTRATION OF RESOURCES FOR COMPENSATORY EDUCATION

SEC. 101. (a) The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") and the Commissioner of Education shall,

(1) in the administration, consistent with the provisions thereof, of the program established by title I of the Elementary and Secondary Education Act of 1965, and

(2) in the administration of any program designed to assist local educational agencies in achieving desegregation or preventing, reducing, or eliminating isolation based on race, color, or national origin in the public schools,

take such action consistent with the provisions of this title, as the Secretary deems necessary to provide assistance under such programs (notwithstanding any provision of law which establishes a program described by clause (2) of this subsection) in such a manner as to concentrate, consistent with such criteria as the Secretary may prescribe by regulation, the funds available for carrying out such programs for the provision of basic instructional services and basic supportive services for educationally deprived students.

(b) A local educational agency shall be eligible for assistance during a fiscal year under any program described by clause (2) of subsection (a) of this section (notwithstanding any provision of law which establishes such program) if it—

(1) is eligible for a basic grant for such fiscal year under title I of the Elementary and Secondary Education Act of 1965,

(2) operates a school during such fiscal year in which a substantial proportion of the students enrolled are from low-income families, and

(3) provides assurances satisfactory to the Secretary that services provided during such fiscal year from State and local funds with respect to each of the schools described in clause (2) of this subsection of such agency will be at least comparable to the services provided from such funds with respect to the other schools of such agency.

(c) In carrying out this section, the Secretary and the Commissioner of Education shall seek to provide assistance in such a manner that—

(1) the amount of funds available for the provision of basic instructional services and basic supportive services for educationally deprived students in the school districts of local educational agencies which receive assistance under any program described in clause (1) or (2) of subsection (a) of this section is adequate to meet the needs of such students for such services, and

(2) there will be adequate provision for meeting the needs for such services of students in such school districts who transfer from schools in which a higher proportion of the number of students enrolled are from low-income families to schools in which a lower proportion of the number of students enrolled are from such families,

except that nothing in this title shall authorize the provision of assistance in such a manner as to encourage or reward the transfer of a student from a school in which students of his race are in the minority to a school in which students of his race are in the majority or the transfer of a student which would increase the degree of racial impaction in the schools of any local education agency.

(d) The Secretary shall prescribe by regulation the proportions of students from low-income families to be used in the program established by this title and may prescribe a range of family incomes, taking into account family size, for the purpose of determining whether a family is a "low-income family."

EFFECT ON ENTITLEMENTS AND ALLOTMENT FORMULAS

SEC. 102. Nothing in this title shall be construed to authorize the Secretary or the Commissioner of Education to

(1) alter the amount of a grant which any local educational agency is eligible to receive for a fiscal year under title I of the Elementary and Secondary Education Act of 1965, or

(2) alter the basis on which funds appropriated for carrying out a program described by section 101(a)(2) of this title would otherwise be allotted or apportioned among the States.

SEC. 103. Upon approval of a grant to a local educational agency to carry out the provisions of this title, the assurances required by the Secretary or the Commissioner of Education pursuant thereto shall constitute the terms of a contract between the United States and the local educational agency, which shall be specifically enforceable in an action brought by the United States.

TITLE II—UNLAWFUL PRACTICES

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 201. No State shall deny equal educational opportunity to an individual on account of his race, color, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools.

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with title IV of this Act, to remove the vestiges of a dual school system.

(c) the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student.

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff.

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency.

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

RACIAL BALANCE NOT REQUIRED

SEC. 202. The failure of an educational agency to attain a balance, on the basis of race, color, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

SEC. 203. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity unless such assignment is for the purpose of segregating students on the basis of race, color, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

TITLE III—ENFORCEMENT

CIVIL ACTIONS

SEC. 301. An individual denied an equal educational opportunity, as defined by this Act, may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this Act referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

JURISDICTION OF DISTRICT COURTS

SEC. 302. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 301.

INTERVENTION BY ATTORNEY GENERAL

SEC. 303. Whenever a civil action is instituted under section 301 by an individual, the Attorney General may intervene in such action upon timely application.

SUITS BY THE ATTORNEY GENERAL

SEC. 304. The Attorney General shall not institute a civil action under section 301 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of title II of this Act; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after notice, undertaken appropriate remedial action.

ATTORNEYS' FEES

SEC. 305. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

TITLE IV—REMEDIES

FORMULATING REMEDIES; APPLICABILITY

SEC. 401. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

SEC. 402. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the

following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof, which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without exceeding the transportation limits set forth in section 403;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools or educational parks; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

TRANSPORTATION OF STUDENTS

SEC. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the sixth grade or below transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the sixth grade or below transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time.

(b) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan which would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the seventh grade or above transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the seventh grade or above transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such

student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time,

unless it is demonstrated by clear and convincing evidence that no other method set out in section 402 will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws that has been found by such court, department, or agency. The implementation of a plan calling for increased transportation, as described in clause (1) or (2) of this subsection, shall be deemed a temporary measure. In any event such plan shall be subject to the limitation of section 407 of this Act and shall only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402. If a United States district court orders implementation of a plan requiring an increase in transportation, as described in clause (1) or (2) of this subsection, the appropriate court of appeals shall, upon timely application by a defendant educational agency, grant a stay of such order until it has reviewed such order.

(c) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

DISTRICT LINES

SEC. 404. In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, or national origin.

VOLUNTARY ADOPTION OF REMEDIES

SEC. 405. Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

REOPENING PROCEEDINGS

SEC. 406. On the application of an educational agency, court orders or desegregation plans under Title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin shall be reopened and modified to comply with the provisions of this Act.

TIME LIMITATION ON ORDERS

SEC. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the

equal protection of the laws shall, to the extent of such transportation, terminate after it has been in effect for five years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than five years.

SEC. 408. Any court order requiring the desegregation of a school system shall terminate after it has been in effect for ten years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order shall be entered against such agency for such purpose unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than ten years.

SEC. 409. For the purposes of sections 407 and 408 of this Act, no period of time prior to the effective date of this Act, shall be included in determining the termination date of an order.

TITLE V—DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) the term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801 (k) of the Elementary and Secondary Education Act of 1965.

(b) the term "local educational agency" means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965.

(c) the term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency or within a school on the basis of race, color, or national origin.

(d) the term "desegregation" means "desegregation" as defined by section 401(b) of the Civil Rights Act of 1964.

(e) an educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(f) the term "basic instructional services" means instructional services in the field of mathematics or language skills which meet such standards as the Secretary may prescribe.

(g) the term "basic supportive services" means noninstructional services, including health or nutritional services, as prescribed by the Secretary.

(h) expenditures for basic instructional services or basic supportive services do not include expenditures for administration, operation and maintenance of plant, or for capital outlay, or such other expenditures as the Secretary may prescribe.

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